

The Salisbury Planning Board held its regular meeting Tuesday, January 24, 2006, in the City Council Chamber of the Salisbury City Hall at 4 p.m. with the following being present and absent:

PRESENT: Dr. Mark Beymer, Lou Manning, Brian Miller, Sandy Reitz, Valarie Stewart, Albert Stout, Dr. Kelly Vance, Price Wagoner, Charlie Walters, and Diane Young

ABSENT: Bryan Duncan and Bryce Ulrich

STAFF: Janet Gapen, Dan Mikkelson, Preston Mitchell, Diana Moghrabi, Joe Morris, David Phillips

Chairman Brian Miller called the meeting to order and offered the invocation. The minutes of the January 10, 2006, meeting were approved as published.

OLD BUSINESS

A. Legislative Committee B—Committee Report and Motion on Z-18-05

Z-18-05, Todd Hildebran - Fountain Quarters Development Citrus Holdings I, LLC

Charlie Walters asked to recuse himself because he owns property adjacent to this case; the Board agreed to allow him to do so.

Preston Mitchell made a presentation for staff. The committee report follows:

The Planning Board's Legislative Committee B convened their meeting January 18, 2006, to discuss the current rezoning petition, Z-18-05, to rezone approximately 127 acres bound by White Farm Road, Jake Alexander Boulevard North, and West Innes Street (Hwy. 601). In attendance were Sandy Reitz, Lou Manning, Brian Miller, Kelly Vance, Albert Stout, Price Wagoner, and staff. Also in attendance were the petitioner, Todd Hildebran, and several residents of the surrounding neighborhood.

The meeting began with a brief overview of the case and what was previously discussed at the January 10 Planning Board meeting. Staff began with a reminder of some of the highlighted points:

1. How is staff recommending that the proposed B-4 district be scaled back to a more community level?
2. What additional concerns were yet to be raised on the extension of water and sewer to the site?
3. How should the zoning be set to help mitigate any negative traffic impacts.
4. What is the overall impact of the proposed RD-A?

Discussion began with Mr. Stout expressing concern about negative traffic impacts on White Farm Road from future commercial at the corner of White Farm and Hwy. 601. Staff reminded the committee that White Farm Road was not currently listed on the city's Thoroughfare Plan as a major or minor thoroughfare. It was suggested by another member to completely remove any commercial at that intersection to help lessen any potential negative impact; plus, "heavier" commercial may be inconsistent with the current uses across Hwy. 601, which includes a church and a cemetery.

Next, the discussion centered on whether the proposed B-4 district should be changed to the B-7 district since the B-7 requires Group Development approval for each site, regardless of square footage. In addition, it was found at the committee meeting that many of the B-4 district uses may not be preferred for the area. Mr. Manning recommended removing the B-4 (or B-7) from the center section of Hwy. 601 and replacing it with B-1 (Office) district. This recommendation was forwarded by Ms. Vance who recommended extending the B-1 from the White Farm intersection down to the pipeline easement.

Members of the public did not speak, but the petitioner made a few comments typically in response to committee remarks.

Ultimately, a MOTION was made by Mr. Manning to recommend approval of the petition subject to the following changes: 1) that all areas proposed for B-4 districting be changed to the B-7 district, and 2) that B-1 district be proposed from the White Farm Road & Hwy. 601 intersection following the proposed north-south zoning line down to the bottom of the Colonial Pipeline easement. This motion was seconded by Mr. Stout.

It must be clarified that the above motion, although containing a caveat for approval, is still subject to an up or down vote. Since the request is for general district rezoning, the most accurate way of stating the motion is that the recommendation is approval subject to x, y, and z; however, if those changes are not made, the recommendation is for disapproval.

Mr. Miller explained that there has already been a courtesy hearing and it was now time for Board discussion. There will be further opportunity for public comment at the City Council meeting February 7. Mr. Manning commended the developer for resubmitting a plan that reflected the committee's suggestions. Mr. Beymer was also pleased with the developer's response. Mr. Beymer still had reservations concerning the B-1 area proposed on the map; he would rather see it zoned RDB. Diane Young had reservations about a strip proposed as B-7; reduce the commercial impact and traffic at the corner of White Farm Road and Hwy 601. Mr. Miller praised the efforts of the developer and the committee. He also had reservations about the proposed B-7 extension on Hwy 601. The "stripping out" of the area is of high concern.

Mr. Manning made a MOTION to recommend approval of Z-18-05 as resubmitted by the developer, which is a little further than the committee recommendation. Albert Stout seconded the motion. AYE: Albert Stout, Lou Manning, Kelly Vance, Sandy Reitz, Price Wagoner. NAY: Diane Young, Mark Beymer, Brian Miller, Valarie Stewart. (Approval 5-4)

Mr. Miller supports the intent of the developer, but would like to see a little bit more of the B-7 pulled toward Jake Alexander Boulevard.

The vote allows B-7 along Jake Alexander Boulevard on the south side and along Hwy 601, B-1 at the intersection of Hwy 601 and White Farm Road, RDB along the western portion of the section and RDA in the areas labeled in brown.

There was comment from the public that they are prepared to speak against this proposal.

B. Legislative Committee A—Committee Report and Motion on Zoning Code Text Amendment regarding Hot Mix Asphalt Plants

The Planning Board's Legislative Committee A convened their meeting January 13, 2006, to discuss the current zoning text amendment petition, T-01-06, to amend the zoning code to permit the use of Hot Mix Asphalt Plants in the M-2 (Heavy Industrial) district subject to issuance of a Special Use Permit. In attendance were Bryce Ulrich, Charlie Walters, Diane Young, Mark Beymer, and staff. Also in attendance were two specialists from the local APAC Asphalt Plant to answer any technical questions.

This item was first brought before the Planning Board at the December 13, 2005, meeting. Staff requested that the item be sent to a legislative committee in order for staff to continue research and work with a committee on many of the sensitive details surrounding this type of use.

The committee first met in December after the meeting of December 13, and presented questions to staff such as: Where does APAC want to relocate? Can they "up-fit" their existing site? What kind of noxious impacts will be placed upon the citizenry if this use is permitted in the city's zoning jurisdiction? Staff provided the committee with a copy of the Salisbury Air Quality Monitoring Study, which was conducted by the Division of Air Quality (DAQ) in 2003. The study found that the majority of air quality and potential health problems were generated from sites not including the Salisbury APAC hot mix asphalt facility. The sites with the largest noxious substance emissions were the adjacent liquid asphalt terminal and two soil remediation sites on Jake Alexander Boulevard.

At the meeting of January 13, staff provided the committee with the following additional information: 1) that criteria for obtaining a DAQ Air Quality Permit in North Carolina is some of the most stringent in the southeast United States, and 2) that Rowan County, which automatically includes the City of Salisbury, is designated as a federal EPA Non-Attainment Area. The Clean Air Act and Amendments of 1990 define a non-attainment area as a locality where air pollution levels persistently exceed [National Ambient Air Quality Standards](#), or that contributes to ambient air quality in a nearby area that fails to meet standards. Most of the counties that are located along the I-85 corridor are considered non-attainment areas. This means that not only are NCDAQ permitting standards some of the most stringent in the southeast but that the ability to obtain an air quality permit in a non-attainment area is even more difficult. Third, staff provided an example of another community's attempt to carefully include hot mix asphalt facilities into their list of permitted uses. The Board of Commissioners for Forsyth County approved the new use with several conditions.

Following lengthy discussion on the aforementioned, a MOTION was made by Dr. Beymer to recommend approval of the request to add Hot Mix Asphalt (HMA) Plants to the M-2 district, subject to issuance of a Special Use Permit. In addition, the following permanent conditions shall be included in the Special Use Permit section of the Zoning Code: 1) That all DAQ permits are to remain current, 2) That no HMA plant may be accessed off of a residential street, 3) That any portion of a HMA plant operation shall be located at least 500 feet from any school or licensed daycare facility, and 4) That a HMA plant is subject to inspection by the city. This motion was seconded by Ms. Young.

The term "residential street" was addressed by Dan Mikkelsen. He stated that street definitions identify three types of roads: Major thoroughfare, Minor thoroughfare, and all others. There is not a term for residential street. Given that a Special Use Permit will be required and City Council will have the authority to deny, the second requirement could be stricken from the motion; Council could protect the public through a site plan and special use permit review. The committee agreed to strike 2) that no HMA plant may be accessed off of a residential street and add staff's suggestion of the addition that "administrative site plan approval be required."

The current Salisbury HMA plant became "grandfathered" into the city and the permitted use vanished from the city's ordinance. The present plant would like to upgrade; therefore, city staff brought the issue before the Planning Board.

New MOTION:

1) That all DAQ permits are to remain current, 2) Administrative site plan approval be required, 3) That any portion of a HMA plant operation shall be located at least 500 feet from any school or licensed daycare facility, and 4) That a HMA plant is subject to inspection by the city.

All members voted AYE. (10-0)

C. Special Committee–Planning Board to adopt 2006-2007 Goals.

Brian Miller will present the Planning Board Goals to the City Council February 7.
The proposed goals for FY2005-2006 are as follows:

Goal	Initiated By	Projected Completion
Review and provide to City Council a recommendation of approval on the proposed Land Development Ordinance.	Planning Board	Summer 2006
Review and provide to City Council a recommendation of approval on the North Main Small Area Plan.	North Main Small Area Plan	Spring 2006
Complete the Sidewalk Prioritization Plan for City Council approval.	Committee 1	Summer 2006
Define the difference between Small Area Planning and Large-Scale Sub-area Land Use Planning, and establish policies for development of future Small Area Plans and Sub-area Plans.	Committee 2	Late Summer 2006
Provide a prioritized list of at least two Small Area Planning Areas and at least two Sub-area Planning Areas to City Council.	Committee 3	Fall / Winter 2006
As part of Sub-area Planning process, conduct a Planning Summit between the city, county, and local development community.	Special Committee	Winter 2006 or early 2007
Conduct a minimum of three Board training exercises	Planning Board	Year-round

Mark Beymer seconded the motion to accept the Planning Board Goals for 2006-2007 with all members voting AYE. (10-0)

At this time it is the 5 o'clock hour and Diane Young had to excuse herself from the meeting.

NEW BUSINESS

CASE NO.	T-03-06 (Zoning Text Amendment)
Petitioner	City of Salisbury
Current Owner	N/A
Size / Scope	citywide
Location	citywide

PETITIONER REQUEST

Request to amend Article VII of the Salisbury Zoning Code by including criteria for which a general district Special Use Permit or S-District Special Use Permit (S-District Permit) can be terminated by City Council.

SPECIAL USE PERMITS

Section 7.10

Termination of a Special Use Permit

Planning Division staff receives land-use legal advice from three sources: 1) The City of Salisbury City Attorney, 2) the Institute of Government at UNC, Chapel Hill, and 3) the Centralina Council of Governments. Richard Ducker, atty., of the Institute has advised the city to carefully terminate an S-District Permit but states there are several reasons why the Permit could be terminated:

- Non-compliance with adopted conditions
- Expressed diminution of value of surrounding properties that may only be expressed during the evidentiary hearing and made a part of the Findings of Fact
- Expressed negative impacts related to the general safety, health, and welfare of the surrounding properties, which may only be expressed during the evidentiary hearing and made a part of the Findings of Fact
- Recorded and repeated Code violations
- Any non-conformity created by amortization of the permitted use which would be established as a condition of the permit
- Any amendment to an S-District zoning to a district that would create a non-conformity between the district and associated permit.

STAFF ANALYSIS

Staff concurs with the Institute's concerns on this issue. Although the city has rarely exercised the authority to terminate such a permit, the recent surge in requests for S-District re-zonings increases the chance of future permit review, amendment, and/or termination. When the City Council has exercised the option to terminate a permit, they have used excellent judgment in justifying their decision; thereby minimizing any liability for taking such corrective action.

The concern for the Institute lies in the fact that the current language essentially allows for unilateral termination of a Special Use Permit. This ability creates an unfair situation for those properties granted the permit. Without any criteria for termination, there is very little guarantee for continued use of the property.

PROPOSED TEXT

ARTICLE VII. GENERAL PROVISIONS

Sec. 7.10. Special use permit

The Salisbury City Council may issue a special use permit as authorized in this section.

(1) *Procedures.*

a. The procedure for the issuance of a special use permit shall be as follows:

- i. City council consideration of a special use permit ~~request or matters related thereto~~ shall be governed by quasi-judicial proceedings, which require the taking of competent evidence, making findings of fact, drawing conclusions, formulating a decision, and issuing an order.
- ii. Prior to holding a public hearing on the requested special use permit, the Salisbury City Council shall receive a recommendation from the Salisbury Planning Board.
- iii. The Salisbury City Council and the Salisbury Planning Board may require any information from any parties in interest as the council or Salisbury Planning Board may deem appropriate in its review and consideration of a special use permit request.
- iv. The authorization of council for a special use permit and all supporting documentation shall become a part of the certificate of occupancy. Failure to comply with the conditions of a special use permit or other provisions of the Salisbury Zoning Ordinance shall constitute a violation of the Salisbury Zoning Ordinance.
- v. The determination of the Salisbury City Council shall be conclusive and final, and there shall be no further appeal to the zoning board of adjustment or any other administrative board or commission. A request for a review may be made in the same manner as an original request. Evidence in support of the request shall initially be limited to that which is necessary to enable the council to determine whether there has been a substantial change in the facts, evidence, or conditions in the case. It shall thereupon treat the request in the same manner as an original request. Otherwise, the council may terminate any further consideration of such request. The city council may, however, review its authorization and the conditions thereof and after such review may modify or change the conditions of the special use permit or may terminate the special use permit only upon agreement with one or more of the conditions set forth

below. Any appeal for administrative review concerning the enforcement of a special use permit shall be to the Salisbury City Council.

b. Conditions for which a Special Use Permit may be terminated shall be as follows:

- i. Non-compliance with adopted conditions.
- ii. Expressed diminution of value of surrounding properties that may only be found during the evidentiary hearing and made a part of the Findings of Fact.
- iii. Expressed negative impacts related to the general safety, health, and welfare of the surrounding community, which may only be found during the evidentiary hearing and made a part of the Findings of Fact.
- iv. Recorded and repeated Code violations.
- v. Any non-conformity created by amortization of the permitted use which would only be established as a condition of the permit.
- vi. Any zoning map amendment to a zoning district that would create a non-conformity between the district and associated permit.

Mark Beymer made a MOTION to recommend approval of the T-03-06 language proposed for the conditions for which a special use permit may be terminated be added to the procedures of the Special Use Permit. Charlie Walters seconded the motion with all members voting AYE. (9-0)

OTHER BOARD BUSINESS

Preston Mitchell acknowledged that attendance records for the Planning Board had been placed at each seat for this meeting. He expressed his gratitude for the members' attendance as volunteers who serve the City of Salisbury. They are each very important.

Mayor Kluttz invited the Planning Board to participate in the Council Retreat February 9. Members will receive a letter.

There being no further business to come before the Planning Board, the meeting was adjourned.

Brian Miller, Chairman

Lou Manning, Vice Chairman

Secretary, Diana Moghrabi